

**COMMISSION MEETING
THURSDAY, JANUARY 13, 2004
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 11:09 a.m., via telephone conference call. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER LIZ McLAUGHLIN, Chair;**
 COMMISSIONER CURTIS LUDWIG; Kennewick;
 COMMISSIONER ORR; Spokane;
 COMMISSIONER JANICE NIEMI, Seattle;

STAFF PRESENT: **RICK DAY, Director;**
 ROBERT BERG, Deputy Director;
 BOB SHERWOOD, Business Operations Administrator;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Chair McLaughlin noted the Commission would only be discussing the two items posted on the agenda:

1. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by **Commissioner Niemi** to approve the new licenses, changes and Class III tribal certifications as listed on pages one through 33 on the approval list.
Vote taken; the motion passed with four aye votes.

2. Supplemental Budget / Proposed Fund Transfer:

Chair McLaughlin initiated the discussion to consider draft correspondence from the Commission to the Legislature regarding a proposed \$3 million fund transfer from the Commission's Revolving Fund to the General Fund. Director Day Reviewed the supporting documentation contained in the agenda packet. He addressed a fund balance graph depicting what would happen if the Legislature transferred the funds—noting it would drop the Commission's operating capital and possibly place the Commission in a position of writing interest bearing warrants. Without the transfer, Director Day explained the projected fund balance would be just above a three-month working capital level. He noted the Commission has strived to retain working capital levels between three to six months.

Director Day affirmed the draft correspondence was submitted for the Commissioners consideration as a mechanism to notify the Senate and House of the Commission's opposition to the proposed fund transfer. He explained the agenda packet also included copies of the Governor's proposed 2004 supplemental budget. Copies of a letter written to the Governor in 2002 expressing the Commission's concerns regarding a proposed \$2 million transfer for the 2001-2003 Biennium were also distributed. However, it was noted that \$2.45 million was transferred from the Commission's revolving fund that year. Director Day noted that later that fiscal year, the Commission did receive one concern from tribal representatives in response to the transfer of funds wherein they voiced their perspective that this could be viewed as a hidden tax. The Commission responded that (at that time) the tribal services were provided before the Commission collected the money; therefore, their concerns weren't materialized. Director Day noted the agenda packet also included copies of the correspondence sent to the Senate and House by the Commission in 2003 requesting that no transfer be facilitated that year, and subsequent correspondence expressing the Commission's appreciation for not transferring funds. He explained the Legislature did not transfer funds in 2003 primarily because of their concerns about the tribal accounts.

Director Day reported the Commission did not enact a fee increase for 2004, and he noted that revenues were running slightly behind projections—the current fund balance is at \$6.3 million. Because of the time of the year, the fund balance is at its peak and will continue to decline through the end of the fiscal year. Director Day indicated that the proposed transfer represented approximately 50 percent of the fund balance.

He also reported that there have been major changes with the billing process for the tribes. Previously, the Commission provided regulatory services and then billed for the service. Presently, 10 of the 18 tribes have paid their fees in advance, which means the Commission has the tribal funds before the services are provided. **Director Day** addressed two new anticipated expenditure increases—having to absorb approximately \$39,000 in Worker's Compensation, and the potential for employee salary increases in 2004 (if approved by the Legislature), resulting in approximately \$330,000 per year, for a 3 percent increase.

Commissioner Ludwig addressed the draft correspondence to the Legislature and noted the Commission has explained why they shouldn't take the money. He believed that if the Commission didn't tell them again, the Committee Chairs may think that it wasn't an important issue for the Commission. **Commissioner Orr** agreed and stated that it was important to remind the Legislature on a regular basis where the Commission's money comes from, and the Commission's perceived inappropriateness of taking the funds. He also believed the Legislature needed to be advised they may be opening themselves up for litigation—notwithstanding the card room facilities, who also feel they are being taxed because the fees are being siphoned off through the transfer mechanism. Commissioner Orr stressed the need to reinforce to the Legislature that a transfer of funds would damage their credibility.

Commissioner Niemi didn't think the Commission should send the letter. She affirmed that the tribal casinos bring in more money and need more regulation. However, the fact that tribes pre-pay for regulatory services means they have lot of money involved, and because of that, it may be worth

a lawsuit. **Commissioner Niemi** advised that approximately 10 years ago, the counties and cities started a lawsuit over unfunded mandates. She noted that every time they have pursued lawsuits, they've won. Commissioner Niemi didn't support writing the letter because this was becoming a bigger issue and because of the fact that tribes have more money involved. Commissioner Niemi supported the Commissioners and Director Day personally speaking to the Legislature. She affirmed the Commission had a duty to talk to the Legislature and reiterate: 1) the argument that the Commission doesn't contribute to the General Fund; 2) revenues generated by the Commission should only be used for regulation and licensing, and 3) a decision to transfer Gambling Commission funds may result in a better chance of getting sued.

Chair McLaughlin believed the Commission needed to send some type of letter, and suggested this letter may not be the right one. She agreed with Commissioner Niemi that it was the Commission's obligation to inform the Legislature and that Commissioners/staff should testify regarding the issue. Commissioner McLaughlin supported sending something because the issue shouldn't be ignored. **Commissioner Niemi** believed that the personal contacts by Commissioners and staff resulted in the Committee Chairs removing the transfer proposal last year. She believed it would be appropriate to remind the Legislature—she didn't think they would read a letter. Commissioner Niemi expressed her concerns about a potential lawsuit and encouraged personal appointments with the House and Senate. **Commissioner Orr** didn't think the letter by itself was the answer, he thought it should also be hand delivered. He believed that \$3 million (the proposed transfer amount) was “chump change” when the Legislature was looking at the entire budget—and that the Commission might be forgotten if we don't say something. He supported the letter and personal visits to reinforce Commission priorities.

Commissioner Niemi responded that she understood the position of her fellow commissioners; however, she was also concerned how the Committee Chairs would react to the letter. She suggested personally delivering the letter to the Committee Chair and explaining this would be the letter the Commission planned to send, and verify with them if they would want the Commission to send the letter. **Commissioner Ludwig** believed that Senator Prentice, as the ranking member on the Ways and Means Committee, would appreciate the hand delivered letter to share with her caucus, coupled with a visit to explain the threat of potential litigation. Commissioner Niemi believed contacting the committee chairs and perhaps the ranking members would be appropriate because in many cases they make the decision on what the committee hears.

Chair McLaughlin inquired if everyone agreed with the concept of Director Day hand delivering a signed copy of the letter to Committee Chairs, and whether everyone was comfortable with the language. **Commissioner Orr** and **Commissioner Ludwig** affirmed. **Commissioner Niemi** advised she was not comfortable with sending a letter.

Discussion was initiated regarding the perception of a transfer of funds being considered a hidden tax. **Commissioner Orr** verified that when he was Chair, he had been approached by licensees and tribal members in informal conversations. He stated that they felt this was a hidden tax – and he emphasized their position has not gone away. **Commissioner Niemi** affirmed this was technically a transfer to the general fund which the Legislature should not be doing. **Chair McLaughlin** was

troubled by the last sentence of paragraph four indicating that from the licensees' and Indian Tribes' points of view, transfers can, in fact, be seen as a hidden tax." After some deliberation, **Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to amend the language to "transfers may be seen as a hidden tax." *Vote taken: the motion was approved unanimously.*

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to accept the amended correspondence and directing Director Day to hand deliver the letter to the appropriate Committee Chairs in the House and Senate. *Vote taken; the motion passed 3-1, Commissioner Niemi voted in the negative.*

Chair McLaughlin acknowledged Dolores Chiechi's presence. Commissioner McLaughlin also reported that she had received a phone call from John Beadle—he suggested that if the \$3 million fund transfer was approved, perhaps the loss could be made up by the Commission approving the \$300 betting limit for card rooms, which would raise regulatory fees.

Director Day thanked the commissioners for their patience regarding the decision on whether or not to conduct the January meeting.

Sincere congratulations were extended to Commissioner McLaughlin when she advised that she has completed her chemotherapy treatments and that she anticipates a positive "remission" declaration by February.

With no other business, **Chair McLaughlin** adjourned the meeting at 11:50 a.m. The next meeting is scheduled for February 12 and 13, 2004, in Olympia.

Minutes submitted by:

Shirley Corbett
Executive Assistant